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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,699	02/01/2006	Lorne Canvin	84358-202 RWD	1139
23529	7590	11/28/2008	EXAMINER	
ADE & COMPANY INC. 2157 Henderson Highway WINNIPEG, MB R2G1P9 CANADA			PATTERSON, MARIE D	
			ART UNIT	PAPER NUMBER
			3728	
			MAIL DATE	DELIVERY MODE
			11/28/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/566,699	CANVIN, LORNE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marie Patterson	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 September 2008.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,9-17 and 25-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-4,9-17 and 25 is/are allowed.
- 6) Claim(s) 26-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26, 28, and 30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bacon (2003/0009915).

Bacon shows a shoe with an upper, a sole, and a footbed (figure 1), an insole with a depth at the metatarsal region of at least 3/8 inch or 0.375 inches (at the metatarsal region the combination of the thickness of layers 20 and 16 can be 0.40625 inches (1/4 inch plus 5/32 inch) , an insert (18) which extends through the heel and arch and spans such inasmuch as applicant has shown and described such and the arch portion is shown to be two times the thickness of the heel portion (see figure 1) as claimed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26, 27, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (2003/0070321) in view of Bacon '915.

Davis shows an insole comprising a top insole layer (18) and an insert (26) which is softer than the insole layer which is inherently placed in footwear having a sole and

upper and footbed substantially as claimed except for the exact thickness of the insole at the metatarsal region. Bacon teaches forming an insole with a thickness greater than 3/8 inch in the metatarsal region. It would have been obvious to form the insole with a thickness of greater than 3/8 inch at the metatarsal region as taught by Bacon in the insole and inherent shoe of Davis to provide desired cushioning and comfort.

5. Claims 26, 29, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ostrom (2857689) in view of Bacon '915.

Van Ostrom shows a shoe (figure 1) comprising an upper, a sole, and a footbed (figure 1), and an insole comprising a top insole layer (10) and an insert (30) substantially as claimed except for the exact thickness of the insole at the metatarsal region. Van Ostrom teaches different materials (rubber or other elastic material for layer 10, column 2 line 20 and sponge rubber or the like for the insert 30 column 3 lines 25-30) and these materials are considered to inherently have different durometers of hardness. Bacon teaches forming an insole with a thickness greater than 3/8 inch in the metatarsal region. It would have been obvious to form the insole with a thickness of greater than 3/8 inch at the metatarsal region as taught by Bacon in the insole and inherent shoe of Van Ostrom to provide desired cushioning and comfort.

***Allowable Subject Matter***

6. Claims 1-4, 9-17, and 25 are allowed.

***Response to Arguments***

7. Applicant's arguments with respect to claims 26-31 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 (**FORMAL FAXES ONLY**). Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

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/Marie Patterson/  
Primary Examiner  
Art Unit 3728